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BROOKLYN OFFICE 2020 FEB 12 PM 8:26

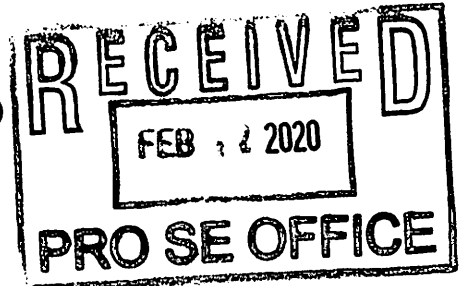
Hon. Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

United States Magistrate Judge Bloom
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Capogrosso v. Gelbstein et al, No. 18-cv-2710 (E.D.N.Y.)
Letter Seeking Resolution of Discovery Dispute

Judge Brodie

Judge Magistrate Bloom:



In follow-up to my letter to this Court dated February 11, 2020 and pursuant to FRCP Rule 37 I seek resolution of the following discovery dispute.

In Attorney Thomson's email to me of February 6, 202 he writes:

The depositions are all scheduled for Thursday and are all at least a week apart, which should hopefully be convenient for all parties and allow plenty of time between depositions for both sides to prepare.

He goes on to write:

Ida Taschen is retired and lives in Troy New York roughly 160 miles from the Eastern District Courthouse, We would like to request that her deposition be taken by telephone pursuant to Federal Rules of Civil Procedure 30(b)(4). Please let me know if you object to a telephonic conference for Ms. Traschen. If you want to depose her in person, we could conduct her deposition in Albay, and OAG would be happy to provide a conference room."

In my emails to Attorney Thomson February 6, 2020 I state my position very clearly, My email of February 6 reads,

The court ordered me to hold depositions at the Courthouse, which would be 225 Cadman Plaza Brooklyn NY.

You were there when that order was read into the record.

RD 2/13/20
JR

I seek not to circumvent it - do not ask me to.

In respect hereto,
Will you be seeking travel costs for Traschen to come to New York.
I need to know – if yes – I will oppose.

Further, I choose to face my accusers, those who put me out of work, Traschen being one of them, face to face. I do not consent to a telephonic conference at this time.

In addition I ask for alternative dates - do you have any.

I also seek to depose Gelbstein, Traschen and Calvo on the same day do you oppose.

In my email of February 7, 2020, I restate my position, I write to Attorney Thomson,

Further in response

1. Attorney Siegmund, State defendants outgoing attorney herein, asked that I conduct my deposition at the Courthouse.

It was not my request. The Court allowed it over my objections.
Prior to motion practice, I will ask again will you be seeking travel costs for Traschen to come to the Courthouse located at 225 Cadman Plaza Brooklyn NY if I choose to depose Traschen.

2. Also I choose to depose all defendants on the same day – do you oppose.
3. Do you have alternate deposition days for the defendants.

All emails are provided in Exhibit A attached.

In respect hereto, it is now February 12, 2020 and Attorney Thomson has still not responded to my emails of February 6 and February 7, 2020, and therefore pursuant to FRCP 37, I come to this Court for relief.

I seek relief on the following

1. As I have stated, I do not seek to circumvent this Court's Order, Defendant Traschen must be deposed at your Courthouse, I do not seek to vacate nor circumvent it.

However, I wish not to pay transportation costs of Defendant Traschen, or any transportation costs of any potential non party witnesses who live in Upstate New York.

State's Attorney M. Siegmund requested that my depositions be held at your Courthouse, I objected, J. Magistrate Bloom ruled in favor of the State Attorney. I should not be burdened with such transportation costs.

I ask the Court's clarification as to who will pay for the aforementioned transportation costs.

2. Attorney Thomson in his email to me of February 6, 2020 has all the State Defendants appearing on different days, and in defense he states "The depositions are all scheduled on Thursdays and are all at least a week apart, which should hopefully be convenient for all parties and allow plenty of time between depositions for both sides to prepare."

In reply,

Attorney Thomson, inappropriately speaks on my behalf. Attorney Thomson's position is not convenient for me. It is not. I must make a living. I must go to work on a daily basis and report to an Office. It is not convenient for me to have all these depositions spread out.

I also argue, it is more convenient for the Court that all depositions be held on the same day, so as my depositions do not tie up and unduly burden Courthouse resources.


Most importantly, I argue, I do not need time to prepare between depositions and again Attorney Thomson should not speak on my behalf. I know the questions I need to ask Defendants Gebstein, Traschen and Calvo.

I want the truth from these Defendants, and I do not want them or their attorneys fabricating or weaving (my opinion, our first Amendment) their responses to questions based on the responses that the previous States Defendants would have already given. By spreading out my depositions over time, these Defendants Gelbstein Traschen, and Calvo and their attorney, have the ability to do so. I want all depositions of the Defendants Gelbstein, Traschen and Calvo be held on the same day, and thus I vehemently object to Attorney Thomson's proposed deposition schedule.

Wherefore, I ask this Court to order that all State Defendants' Gebstein, Traschen and Calvo be presented on the same day for their depositions, at your Courthouse, located at 225 Cadman Plaza Brooklyn, N.Y.

Dated: February 12, 2020
New Rochelle, New York

Respectfully truthfully requested,



Mario H. Capogrosso
(914) 806-3692

EXHIBIT A

From: nry4 <nry4@aol.com>
To: James.Thompson <James.Thompson@ag.ny.gov>
Subject: Re: Deposition dates demand
Date: Fri, Feb 7, 2020 12:08 pm

Further in response.

1. Attorney Siegmund, State defendants' outgoing attorney herein, asked that I conduct my depositions at the Courthouse.

It was not my request. The Court allowed it over my objections.

Prior to motion practice, I will ask again **will you be seeking travel costs** for Traschen to come to the Courthouse located at 225 Cadman Plaza Brooklyn NY, if I choose to depose Traschen.

2, Also I choose to depose all defendants on same day - do you oppose.
Is there a day all three defendants - Gelbstein, Traschen and Calvo can appear

3. Do you have alternate deposition days for the the defendants.

Mario H. Capogrosso

-----Original Message-----

From: Thompson, James <James.Thompson@ag.ny.gov>
To: nry4@aol.com <nry4@aol.com>
Sent: Thu, Feb 6, 2020 3:37 pm
Subject: RE: Deposition dates demand

Dear Mr. Capogrosso,

Regarding your request for deposition dates, I have contacted the various State-affiliated deponents on your list, and we propose the following days:

Jean Flanagan – March 5
Ida Traschen – March 12
Alan Gelbstein – March 19
Vincent Palmieri – March 26
Bushra Vahdatlamas – April 9
Danielle Calvo – April 30

I am still figuring out a date for AAG Morgan, but will get back to you with that as soon as practicable.

The depositions are all scheduled for Thursdays and are all at least a week apart, which should hopefully be convenient for the parties and allow plenty of time between depositions for both sides to prepare. Note that Ms. Traschen, Judge Gelbstein, and Ms. Calvo are parties whose depositions can be initiated by a Rule 30 deposition notice, but Ms. Flanagan, Mr. Palmieri, Ms. Vahdatlamas, and AAG Morgan are all nonparties who must be subpoenaed under Rule 45. As Judge Bloom mentioned at the conference, subpoenas need to be served by someone who is not a party to the action.

From: nry4 <nry4@aol.com>

To: James.Thompson <James.Thompson@ag.ny.gov>

Subject: Re: Deposition dates demand

Date: Thu, Feb 6, 2020 6:14 pm

I know the law.

Do not advocate on my behalf.

The Court ordered me to hold depositions at the Courthouse, which would be 225 Cadman Plaza Brooklyn NY.

You were there when that order was read into the record.

I seek not to circumvent it, do not ask me to.

Traschen is required to be deposed at the Courthouse.

In respect hereto,

Will you be seeking travel costs for Traschen to come to New York.

I need to know - if yes - I will oppose.

Further I choose to face my accusers, those who put me out of work, Traschen being one of them, face to face I do not consent to a telephonic conference at this time.

In addition I asked for alternative dates - do you have any.

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Mario H. Capogrosso

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To: nry4@aol.com <nry4@aol.com>

Sent: Thu, Feb 6, 2020 3:37 pm

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To: nry4@aol.com <nry4@aol.com>
Subject: RE: Deposition dates demand
Date: Thu, Feb 6, 2020 3:37 pm
Attachments: image001.png (68K)

Dear Mr. Capogrosso,

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The depositions are all scheduled for Thursdays and are all at least a week apart, which should hopefully be convenient for the parties and allow plenty of time between depositions for both sides to prepare. Note that Ms. Traschen, Judge Gelbstein, and Ms. Calvo are parties whose depositions can be initiated by a Rule 30 deposition notice, but Ms. Flanagan, Mr. Palmieri, Ms. Vahdatlomas, and AAG Morgan are all nonparties who must be subpoenaed under Rule 45. As Judge Bloom mentioned at the conference, subpoenas need to be served by someone who is not a party to the action.

One additional matter – Ida Traschen is retired and lives in Troy, NY, roughly 160 miles from the Eastern District Courthouse. We would like to request that her deposition be taken by telephone pursuant to Federal Rule of Civil Procedure 30(b)(4). Please let me know if you object to a telephonic deposition for Ms. Traschen. If you want to depose her in person, we could conduct her deposition in Albany, and OAG would be happy to provide a conference room.

Best,

James



James M. Thompson | Assistant Attorney General

New York State Office of the Attorney General, Litigation Bureau

28 Liberty Street, 17th Floor | New York, NY 10005

Tel: (212) 416-6556 | James.Thompson@ag.ny.gov

From: nry4@aol.com <nry4@aol.com>

Sent: Wednesday, January 29, 2020 8:33 PM

To: Thompson, James <James.Thompson@ag.ny.gov>

Subject: Re: Deposition dates demand

I demand dates in a timely fashion, in compliance with my request,

or I will begin motion practice to compel.

This should not be difficult.

Mario H. Capogrosso

-----Original Message-----

From: Thompson, James <James.Thompson@ag.ny.gov>

To: nry4@aol.com <nry4@aol.com>

Sent: Wed, Jan 29, 2020 5:02 pm

Subject: RE: Deposition dates demand

Dear Mr. Capogrosso,

Unfortunately, I don't have proposed dates for you as yet. I will follow up on this and hope to have a preliminary response for you by early next week.

Best,

James



James M. Thompson | Assistant Attorney General
New York State Office of the Attorney General, Litigation Bureau
28 Liberty Street, 17th Floor | New York, NY 10005
Tel: (212) 416-6556 | James.Thompson@ag.ny.gov

From: nry4@aol.com <nry4@aol.com>
Sent: Wednesday, January 22, 2020 5:15 PM
To: Thompson, James <James.Thompson@ag.ny.gov>
Subject: Deposition dates demand

[EXTERNAL]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

MARIO H. CAPOGROSSO,

Plaintiff

-against-

DEMAND FOR

DEPOSITION DATES

ALAN GELBSTEIN, in his official and individual capacity;

BOSHRA VAHDATLAMAS, (also known as BUSHRA VAHDAT) in her official and individual capacity;

IDA TRASCHEN, in her official and individual capacity;
ELIZABETH PRICKETT-MORGAN, in her official and individual capacity;
JEAN FLANAGAN, in her official and individual capacity;
VINCENT PALMIERI, in his official and individual capacity;
DANIELLE CALVO, in her official and individual capacity;
SADIQ TAHIR, in his individual capacity;
PEC GROUP OF NY, INC.;
DAVID SMART, in his individual capacity;
JOHN AND JANE DOE.

Defendants

Pursuant to Rules 27 – 32 of the Federal Rules of Civil Procedure the Plaintiff, Mario H. Capogrosso, demands the State Defendants' Gelbstein, Traschen and Calvo **provide a date, and three alternative dates**, upon which their deposition upon oral examination may be taken. Plaintiff demands a response within seven days (7) of the service of this discovery request to be provided at Plaintiff's current address listed below.

Dated: January 22, 2020

New Rochelle, NY

Submitted,

Mario H. Capogrosso

21 Sheldrake Place

New Rochelle, NY 10804

(914) 806-3692

IMPORTANT NOTICE: This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

1Attached Images



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARIO H. CAPOGROSSO

Plaintiff

-against-

ALAN GELBSTEIN, et. al

Defendants.

18 CV 2710

AFFIRMATION OF SERVICE

I, Mario H. Capogrosso, declare under penalty of perjury that I have served a copy of the
attached Letters Seeking Deposition Dates at Courthouse and Clarification as to Deposition
Transportation Costs

upon:

James Thomson
(representing Defendants
Gelbstein, Traschen, Vahdat, Palmieri, Flanagan, Calvo,
and Prickett-Morgan)
Assistant Attorney General
28 Liberty Street
New York, NY 10005

Sadiq Tahir
2994 Coney Island Avenue
Brooklyn, NY 11235

Pec Group of NY
935 S. Lake Blvd. #7
Mahopac, NY 10541

David Smart
2875 West 8th Street
Brooklyn, NY 11224

via U.S. Postal Service First Class Mail, this 11th day of February 2020.

February 11, 2020
New Rochelle, New York

A handwritten signature in black ink, appearing to read "M-H-C", is written over a horizontal line.

Mario H. Capogrosso
21 Sheldrake Place
New Rochelle, NY 10804
(914) 806-3692

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____ X

MARIO H. CAPOGROSSO

Plaintiff

-against-

18 CV 2710

ALAN GELBSTEIN, et. al

AFFIRMATION OF SERVICE

Defendants.

_____ X

I, Mario H. Capogrosso, declare under penalty of perjury that I have served a copy of the
attached Letters Seeking Resolution of Discovery Dispute

upon:

James Thomson
(representing Defendants
Gelbstein, Traschen, Vahdat, Palmieri, Flanagan, Calvo,
and Prickett-Morgan)
Assistant Attorney General
28 Liberty Street
New York, NY 10005


Sadiq Tahir
2994 Coney Island Avenue
Brooklyn, NY 11235

Pec Group of NY
935 S. Lake Blvd. #7
Mahopac, NY 10541

David Smart
2875 West 8th Street
Brooklyn, NY 11224

via U.S. Postal Service First Class Mail, this 12th day of February 2020.

February 12, 2020
New Rochelle, New York



Mario H. Capogrosso
21 Sheldrake Place
New Rochelle, NY 10804
(914) 806-3692